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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES RAFTON, TRUSTEE OF THE
JAMES AND CYNTHIA RAFTON TRUST,

Plaintiff,

v.

RYDEX SERIES FUNDS; PADCO
ADVISORS INC. d/b/a RYDEX
INVESTMENTS, INC.; RYDEX
DISTRIBUTORS, INC.; RICHARD M.
GOLDMAN; CARL G. VERBONCOEUR;
JOHN O. DEMARET; NICK BONOS;
MICHAEL P. BYRUM; COREY A.
COLEHOUR; J. KENNETH DALTON;
WERNER E. KELLER; THOMAS F. LYDON;
PATRICK T. MCCARVILLE; ROGER
SOMERS; and DOES 1 through 25, inclusive,

Defendants.

No. CV 10-01171 CRB

Action Filed: March 19, 2010

NOTICE OF MOTION AND MOTION
AND MOTION TO APPOINT RYDEX
LITIGATION GROUP AS LEAD
PLAINTIFF AND TO APPROVE
PROPOSED LEAD PLAINTIFFS'
SELECTION OF COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: June 25, 2010

Time: 10:00 a.m.

Dept: Courtroom 8, 19th Floor

Judge: Hon. Charles R. Breyer

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on June 25, 2010, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 8, before the Honorable Charles R. Breyer, United States District Judge, Plaintiff James Rafton and movant James Darst, Jr. (collectively, the “Rydex Litigation Group” or “Group”) will and hereby do move for an Order: (1) appointing the Rydex Litigation Group as Lead Plaintiff; and (2) approving the Rydex Litigation Group’s selection of Sparer Law Group as Lead Counsel.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the accompanying Declarations of Kevin H. Lewis, James Rafton, and James Darst, Jr., the Corrected Certification of James Rafton, the Certification of James Darst, Jr. and the complete files and records herein, and, if necessary, on argument and other evidence to be presented at the hearing of this matter.

The Rydex Litigation Group makes this Motion on the belief that it is the most “adequate plaintiff” as defined in the lead plaintiff provision of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §77z-1(a)(3), because it has what is believed to be the largest financial interest in the relief sought by the Class with losses in the amount of \$743,341.27, and otherwise satisfies the typicality and adequacy requirements of Federal Rule of Civil Procedure 23(a). The Rydex Litigation Group further requests that the Court approve its selection of Sparer Law Group as Lead Counsel because the firm has substantial experience prosecuting and defending complex securities cases and class actions.

For all of the foregoing reasons, the Rydex Litigation Group respectfully requests that this Court: (1) appoint the Rydex Litigation Group as Lead Plaintiff in this action; (2) approve the Rydex Litigation Group’s selection of Lead Counsel for the Class; and (3) grant such other and further relief as the Court may deem just and proper.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF ISSUES TO BE DECIDED**

3 This putative class action arises from false and misleading statements made in the
4 Registration Statements, Prospectuses and related documents of the Rydex Inverse Government
5 Long Bond Strategy Fund (the “Fund”) in violation of Sections 11 and 12(a)(2) of the Securities
6 Act. By this motion, the Rydex Litigation Group hereby moves for appointment as Lead Plaintiff
7 in this action against Defendants, and for approval of the Rydex Litigation Group’s selection of
8 the Sparer Law Group as Lead Counsel.

9 The Rydex Litigation Group seeks to be appointed Lead Plaintiff pursuant to the
10 provisions set forth in the PSLRA. The members of the Rydex Litigation Group purchased
11 and/or held Fund shares from March 19, 2007 to March 19, 2010 (the “Class Period”). Based on
12 the information available at this time, the Rydex Litigation Group believes it has incurred the
13 largest known loss of any person or group seeking appointment as Lead Plaintiff—incurring
14 aggregate losses of approximately \$743,341.27. The Rydex Litigation Group will vigorously and
15 actively represent the class in this action, and otherwise satisfies the typicality and adequacy
16 requirements of Federal Rule of Civil Procedure 23(a).

17 The Rydex Litigation Group also seeks approval of its selection of Sparer Law Group as
18 Lead Counsel. The Rydex Litigation Group has retained counsel having substantial experience
19 in prosecuting and defending complex securities cases and class actions.

20 **STATEMENT OF FACTS**

21 On March 19, 2010, Plaintiff James Rafton filed a class action complaint on behalf of all
22 Class A, B and C purchasers of the Fund during the period March 19, 2007 and March 19, 2010.
23 The Complaint alleges that during the class period Defendants violated Sections 11 and 12(a)(2)
24 of the Securities Act of 1933 by issuing and offering for sale the Fund’s shares pursuant to untrue
25 or misleading Registration Statements and related SEC filings. Cmpl’t. ¶¶1-2.

26 The Complaint alleges that as it was marketed and sold, the Fund was supposed to be
27 inversely correlated to its benchmark—the price of the 30-year U.S. Treasury Bond or “Long
28 Bond.” For example, when the price of the benchmark 30-year U.S. Treasury Bond decreases,

1 the price of the Fund will increase by the same percentage. However, because of the undisclosed
 2 mathematical compounding effect present that causes the Fund's price to deviate from its
 3 benchmark in a manner that harms investors, the Fund failed to deliver the expected returns. *Id.*
 4 ¶¶29-37.

5 The Financial Industry Regulatory Authority ("FINRA") issued a regulatory notice in
 6 June 2009 which cautioned member firms about the risks inherent in these types of complicated
 7 financial products, stating that they "are unsuitable for retail investors who plan to hold them for
 8 longer than one trading session, particularly in volatile markets." *Id.* ¶48. FINRA admonished
 9 member firms that sales materials relating to leveraged funds must be "fair and balanced." *Id.*

10 The Complaint alleges that the Registration Statements issued for the Fund during the
 11 class period were false and/or misleading because they failed to disclose: (a) that the
 12 mathematical "compounding" would cause the fund's price to deviate from the inverse
 13 movement of the Long Bond index for periods lasting longer than a single trading day; (b) that
 14 inverse correlation between the Fund and the price of the Long Bond over time would only occur
 15 in the rarest of circumstances; (c) that the Fund's performance over time would inevitably
 16 diverge on an increasing basis from the inverse of the performance of the price of the Long
 17 Bond; and (d) that the Fund is unsuitable for investors who plan to hold it for longer than one
 18 trading session, particularly in volatile markets. *Id.* ¶¶63-64. As a result of Defendants' conduct,
 19 during the Class Period, investors holding the Fund's shares lost money even though the
 20 benchmark price of the Long Bond fell—precisely the type of period during which investors
 21 would have expected to make money. *Id.* ¶37.

22 The Rydex Litigation Group consists of two large investors, (James Rafton and James
 23 Darst, Jr.), with a pre-litigation relationship. Mr. Rafton and Mr. Darst are business partners and
 24 have a long personal relationship with each other. Together they purchased 415,615.92 shares
 25 during the class period; had net purchases of 382,464.35 shares; expended net funds during the
 26 class period of approximately \$5,831,201.87; and have losses during the period of approximately
 27 \$743,341.27. The breakdown for both members of the Group is set forth in the chart below at
 28

1 Section B.2. Mr. Rafton and Mr. Darst believe that their losses represent the largest known loss
2 of any person or group seeking appointment as Lead Plaintiff.

3 **PROCEDURAL HISTORY**

4 On March 19, 2010, Plaintiff James Rafton filed the first lawsuit against Defendants in
5 any district, *Rafton, et al. v. Rydex Series Funds, et al.*, in the Northern District of California,
6 individually and on behalf of all persons or entities that purchased or otherwise acquired shares
7 in the Fund pursuant or traceable to the Fund's false and misleading Registration Statements and
8 Prospectuses.

9 The same day that his Complaint was filed, March 19, 2010, Plaintiff caused to be filed a
10 notice over Marketwire, a nationally recognized wire service as required by the PSLRA,
11 informing investors of the pendency of the action, and that investors had sixty days to seek
12 appointment as lead plaintiff. Declaration of Kevin H. Lewis ("Lewis Dec.") Ex. A ("Published
13 Notice"). The Published Notice also described the general allegations against Defendants. *Id.*

14 Consistent with the terms of the PSLRA, Movants now timely file this motion for
15 appointment as Lead Plaintiff, which is within 60 days from the publication of the Published
16 Notice of pendency of the action on Marketwire.

17 **DISCUSSION**

18 **A. The Rydex Litigation Group Should Be Appointed Lead Plaintiff.**

19 The selection of Lead Plaintiff in class actions subject to the procedural requirements of
20 the PSLRA depends upon a determination as to which plaintiff or group of plaintiffs is the most
21 capable of representing the interests of the class. *See* 15 U.S.C. §§77z-1(a)(3)(A), (B) (the court
22 "shall appoint as lead plaintiff the member or members of the purported plaintiff class that the
23 court determines to be most capable of adequately representing the interests of class members ...
24 in accordance with this subparagraph"). The Rydex Litigation Group consists of two
25 sophisticated investors and businessmen with a demonstrated ability to direct litigation and
26 represent the interests of the class.

27 The PSLRA creates a rebuttable presumption that "the most adequate plaintiff" is the
28 plaintiff or group of plaintiffs who: (1) has either filed the complaint or brought a motion for

1 appointment as lead plaintiff in response to the publication of notice; (2) has the largest financial
 2 interest in the relief sought by the class; and (3) otherwise satisfies the requirements of Federal
 3 Rule of Civil Procedure 23. 15 U.S.C. §77z-1(a)(3)(B)(iii)(I). This presumption may be rebutted
 4 only upon proof that the presumptive lead plaintiff: (1) will not fairly and adequately represent
 5 the class; or (2) is subject to unique defenses that will render such plaintiff incapable of
 6 adequately representing the class. 15 U.S.C. §77z-1(a)(3)(B)(iii)(II).

7 The Ninth Circuit has held that the PSLRA “provides a simple three-step process for
 8 identifying the lead plaintiff.” *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). The first
 9 step “consists of publicizing the pendency of the action, the claims made and the purported class
 10 period.” *Id.* At the second step, “the district court must consider the losses allegedly suffered by
 11 the various plaintiffs,” and select as the “presumptively most adequate plaintiff . . . the one who
 12 has the largest financial interest in the relief sought by the class and [who] otherwise satisfies the
 13 requirements of Rule 23 of the Federal Rules of Civil Procedure.” *Id.* at 729-30 (citations and
 14 internal quotation marks omitted). In the third and final step, the court must “give other plaintiffs
 15 an opportunity to rebut the presumptive lead plaintiff’s showing that it satisfies Rule 23’s
 16 typicality and adequacy requirements.” *Id.* at 730.

17 As more fully discussed below, the Rydex Litigation Group is the most adequate Lead
 18 Plaintiff investor group, is not subject to unique defenses, and therefore should be appointed as
 19 Lead Plaintiff.

20 **1. The Rydex Litigation Group Has Complied With The PSLRA**
 21 **Notice Requirement And Has Timely Moved For Lead Plaintiff**
 22 **Status.**

23 The Rydex Litigation Group has timely moved this Court for appointment as Lead
 24 Plaintiff within the 60-day period required by the PSLRA. On March 19, 2010, Plaintiff James
 25 Rafton issued a notice consistent with the provisions of the PSLRA as outlined above. *See* Lewis
 26 Dec. ¶2 & Ex. A. The Rydex Litigation Group filed this motion within the time required by the
 27 PSLRA and therefore met the first requirement required to be presumptive Lead Plaintiff.
 28

2. The Rydex Litigation Group Has The Largest Financial Interest Of Plaintiffs Who Have Submitted Applications For Lead Plaintiff.

Under the PSLRA, the presumptive “most adequate plaintiff” is the plaintiff or plaintiff group with the largest financial interest in the relief sought by the class. 15 U.S.C. §77z-1(a)(3)(B)(iii)(I)(bb); *Ferrari v. Gisch*, 225 F.R.D. 599, 603 (C.D. Cal. 2004) (“So long as the plaintiff with the largest losses satisfies the typicality and adequacy requirements, he is entitled to lead plaintiff status ...”) (citation and internal quotation marks omitted). To determine whether a lead plaintiff has the largest financial loss, courts compare the financial interests of the various plaintiffs at stake in the litigation. *In re Cavanaugh*, 306 F.3d at 729-30.

The Ninth Circuit does not have a uniform or mandatory rule for calculating financial interest. *Id.* at 731 n.8 (district court’s discretion in determining which plaintiff has the greatest financial interest in the litigation not decided). However, courts in the Northern District have applied a four-factor test to identify the plaintiff with the largest financial interest: “(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered.” *See Casden v. HPL Technologies, Inc.*, 2003 U.S. Dist. LEXIS 19606, at *12 (N.D. Cal. Sept. 29, 2003). Courts generally have concluded that the last factor is the most important element of the test. *See Reimer v. Ambac Fin. Group, Inc.*, 2008 U.S. Dist. LEXIS 38729, at *10 (S.D.N.Y. May 9, 2008) (“The fourth factor is viewed as the most important”); *In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 437 (S.D.N.Y. 2008) (“This Court, like many others, ‘shall place the most emphasis on the last of the four factors: the approximate loss suffered by the movant’”) (citation omitted).

Applying the four-factor test, the losses suffered for the Rydex Litigation Group collectively and for each of its members are summarized below:

Individual Committee Members	(1) Shares Purchased During Class Period	(2) Net Shares Purchased During Class Period ¹	(3) Net Funds Expended During Class Period ²	(4) Loss During Class Period
James Rafton	241,333.52	208,181.95	\$2,931,201.87	\$297,237.42
James Darst, Jr.,	174,282.40	174,282.40	\$2,900,000.00	\$446,103.85
Totals	415,615.92	382,464.35	\$5,831,201.87	\$743,341.27

See Lewis Dec. Exs. B, C (detailing Rydex Litigation Group members' Rydex Inverse Government Long Bond Strategy Fund transaction information). To the best of our knowledge, the Rydex Litigation Group has the largest financial interest in the litigation of any party or cohesive group moving to be appointed Lead Plaintiff, and it is "presumptively the most adequate plaintiff" under the PSLRA.

3. The Rydex Litigation Group Is A Small, Organized Group Of Sophisticated Investors With a Pre-Existing Relationship Who Will Actively Oversee And Direct The Litigation.

The PSLRA expressly recognizes that groups of individuals may serve as lead plaintiffs. See 15 U.S.C. §78u-4(a)(3)(B); *In re Cavanaugh*, 306 F.3d at 731 (appointment of a lead plaintiff group consisting of a number of investors is permissible under the PSLRA). In addition, district courts in the Ninth Circuit have held that under appropriate circumstances small groups, especially where the groups have a pre-litigation relationship, can aggregate their financial losses when seeking to be appointed lead plaintiff. See *In re Versata, Inc. Sec. Litig.*, 2001 U.S. Dist. LEXIS 24270, at *19-*23 (N.D. Cal. Aug. 17, 2001) ("singular focus [in determining adequacy of PSLRA group] will be whether the asserted group has demonstrated the ability to represent the class and direct the litigation without undue influence from counsel"). To qualify as the "most adequate plaintiff," a group of investors must be a cohesive, closely related group, not a large, unrelated group of investors. See *In re Advanced Tissue Sciences Sec. Litig.*, 184 F.R.D. 346,

¹"Net Shares Purchased" is the difference between the number of shares purchased and the number of shares sold during the class period.

²"Net Funds Expended" is the difference between the amount spent to purchase shares and the amount received for the sale of shares during the class period.

1 352 (S.D. Cal. 1998) (refusing to appoint a group consisting of “over 250 unrelated investors”
2 because of the court’s determination that doing so would be “inconsistent with the goal of
3 restoring control over lawsuits to plaintiffs, instead of counsel”). Where a lead plaintiff group is
4 a small, discrete group of sophisticated investors, who have each suffered substantial losses and
5 who have organized themselves in a manner designed to ensure that they take an active oversight
6 role in directing the litigation, the appointment of the group as lead plaintiff is appropriate. *Id.* at
7 352-53 (appointing group of six investors as lead plaintiff).

8 The Rydex Litigation Group is a permissible group under the PSLRA that meets the
9 standards articulated in the opinions above. The group consists of two individuals who are
10 business partners and have known each other for over thirty years. Mr. Rafton and Mr. Darst
11 discussed investing in the Fund with each other before making their investments, and hired and
12 used the same broker to purchase their shares in the Fund. In addition, Mr. Rafton and Mr. Darst
13 approached and later decided to retain Sparer Law Group together to determine if their legal
14 rights had been violated based upon Defendants’ actions. In short, the Rydex Litigation Group is
15 precisely the type of closely knit group that is favored by Courts in this district, because they will
16 not be susceptible to undue influence of counsel.

17 In addition to their pre-litigation relationship, each individual in the group has significant
18 business experience, and is capable of overseeing counsel. *See* Lewis Dec. Exs. D, E. Each
19 member of the Group also invested large sums in the Fund, amounting to over \$2,900,000, and
20 incurred substantial losses totaling \$743,341.27, and as a result each is substantially motivated to
21 prosecute this action. Each has signed a sworn certification affirming their willingness to serve
22 as, and assume the responsibilities of, a class representative. *See* Lewis Dec. Exs. B, C.

23 After meeting with Sparer Law Group, the Rydex Litigation Group decided to adopt
24 formalities to manage this litigation. The members of the Group determined how they will
25 supervise the litigation and determined how they were to receive briefing updates from counsel.
26 The Group also established a process for making decisions regarding the litigation, and
27 established means to communicate regarding the matter. The Group decided that either member
28 could request a meeting or conference call, and that counsel is to provide written updates to the

1 Group monthly via email or whenever important news occurs. The Group also decided that
 2 counsel is to provide quarterly billing records documenting the time spent and the costs incurred
 3 for the quarter, and the total of these items to date. Finally, the Group decided that any decisions
 4 regarding the litigation must be unanimous.

5 Because of the facts set forth above, the Rydex Litigation Group is a sophisticated and
 6 independent group that is capable of overseeing this matter consistent with the provisions of the
 7 PSLRA.

8 9 **4. The Rydex Litigation Group Otherwise Satisfies The Requirements Of Rule 23.**

10 Once the movant with the largest financial interest has been identified, the Court must
 11 appoint that movant as Lead Plaintiff unless it finds that the movant is otherwise inadequate or
 12 subject to unique defenses. 15 U.S.C. §77z-1(a)(3)(B)(iii)(II); 15 U.S.C. §78u-4(a)(3)(B)(iii)(II);
 13 *In re Cavanaugh*, 306 F.3d at 732. In the context of determining the appropriate lead plaintiff
 14 under the PSLRA, the “typicality” and “adequacy” requirements of Federal Rule of Civil
 15 Procedure 23 are the key factors. *Id.* at 730.

16 17 **a. The Rydex Litigation Group’s Claims Are Typical Of The Claims Of All Class Members.**

18 Because the Rydex Litigation Group’s claims all arise from the same course of conduct
 19 and have the same essential characteristics, the claims are “typical” under Federal Rule of Civil
 20 Procedure 23. *See Weisz v. Calpine Corp.*, 2002 U.S. Dist. LEXIS 27831, at *30 (N.D. Cal.
 21 Aug. 15, 2002) (the typicality requirement is satisfied when the plaintiff’s claim arises from the
 22 same event or course of conduct that gives rise to the claims of other members and is based on
 23 the same legal or remedial theory); *Crossen v. CV Therapeutics*, 2005 U.S. Dist. LEXIS 41396,
 24 at *13-*14 (N.D. Cal. Aug. 9, 2005) (same); *In re Enron Corp. Sec. Litig.*, 206 F.R.D. 427, 446
 25 n.10 (S.D. Tex. 2002) (“The test for typicality is not demanding.... [T]he critical inquiry is
 26 whether the class representative’s claims have the same essential characteristics of the putative
 27 class”) (citations omitted).

28 *Here*, the typicality requirement is met because the Rydex Litigation Group’s claims arise

1 from the same course of conduct that affects all members of the class. The Rydex Litigation
 2 Group, like all other members of the class, was damaged because Defendants violated Sections
 3 11 and 12(a)(2) of the Securities Act by misrepresenting the effects of mathematical
 4 compounding on the Fund's shares through issuing identical Registration Statements and
 5 Prospectuses.

6 Moreover, the Rydex Litigation Group is not subject to any unique or special defenses.
 7 Accordingly, the Rydex Litigation Group meets the typicality requirement of Rule 23.

8
 9 **b. The Rydex Litigation Group Will Adequately Protect
 The Interests Of All Class Members.**

10 Under Federal Rule of Civil Procedure 23(a)(4), the representative party must "fairly and
 11 adequately protect the interests of the class." The requirements of Rule 23(a) relating to adequate
 12 representation are satisfied if the named plaintiffs and their counsel: (1) do not have any conflicts
 13 of interest with other class members; and (2) will prosecute the action vigorously on behalf of the
 14 class. *In re THQ Inc. Sec. Litig.*, 2002 U.S. Dist. LEXIS 7753, at *20 (C.D. Cal. Mar. 22, 2002)
 15 (citations omitted); *Backe v. Novatel Wireless, Inc.*, 2008 U.S. Dist. LEXIS 100622, at *10-*11
 16 (S.D. Cal. Dec. 10, 2008) (same).

17 The Rydex Litigation Group's interests are clearly aligned with the members of the
 18 proposed class. There is no evidence of antagonism between the Rydex Litigation Group's
 19 interests and those of the proposed class members. In fact, the Rydex Litigation Group is clearly
 20 motivated and able to vigorously pursue this action. As noted above, the Rydex Litigation Group
 21 has claims identical to the proposed class, and has been harmed by the same wrongful conduct.
 22 In addition, each member of the Rydex Litigation Group has a significant and compelling interest
 23 in the successful conclusion of the action given his substantial financial loss. Mr. Rafton and Mr.
 24 Darst have also confirmed their commitment to this action by signing a certification affirming a
 25 willingness to serve as lead plaintiff, assume the responsibilities of class representative, and
 26 confer with counsel on a regular basis. Finally, the Rydex Litigation Group has selected and
 27 retained to represent them and the class, attorneys experienced in litigating securities cases and
 28 class actions such as this one.

B. The Rydex Litigation Group's Choice Of Counsel Should Be Approved.

The PSLRA directs that once the court has designated a lead plaintiff, that plaintiff “shall, subject to the approval of the court, select and retain counsel to represent the class.” 15 U.S.C. §78u-4(a)(3)(B)(v); *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 673 (C.D. Cal. 2005) (A court may disturb the lead plaintiff’s choice of counsel only if it appears necessary to “protect the interests of the class”) (quoting 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa)); *In re Versata, Inc.*, 2001 U.S. Dist. LEXIS 24270, at *27 (same). While the appointment of counsel is made subject to the approval of this Court, the Reform Act clearly leaves the choice of class counsel in the hands of the lead plaintiff, and courts generally defer to the lead plaintiff’s choice. *In re Cendant Corp. Litig.*, 264 F.3d 201, 273-75 (3d Cir. 2001) (analyzing legislative history of Reform Act and concluding that courts “should generally employ a deferential standard in reviewing the lead plaintiff’s choices”).

The Rydex Litigation Group has selected Sparer Law Group to serve as lead counsel for the class. Sparer Law Group (“SLG”) was founded in 2003 by Alan Sparer after 20 years of experience as a litigator and director at Howard, Rice, Nemerovski, Canady, Falk & Rabkin in San Francisco, California. The firm’s primary practice focuses on representing individual and institutional investors in complex litigation in federal and state courts and arbitrations in FINRA and other forums. In addition, SLG continues to litigate complex matters in diverse areas, including unlawful banking practices, CEQA, insurance coverage, real estate and health care. As one example, SLG is currently serving as lead plaintiff’s counsel for a class of investors in the Oppenheimer Rochester Funds Group multidistrict litigation pending in the U.S. District Court for the District of Colorado.

Three of SLG’s four lawyers spent a substantial part of their legal careers practicing at Howard Rice before forming or joining SLG. Their experience in securities litigation, class actions, consolidated actions and other major litigation, together with a brief biography of each lawyer, is attached as Exhibit F to the Lewis Declaration. The experience of SLG in litigating class and individual securities cases and business matters assures that Plaintiffs will be well

1 represented, not only as to class certification issues, but also with respect to the securities at issue
2 in this litigation.

3 **CONCLUSION**

4 For the foregoing reasons, the Rydex Litigation Group respectfully requests that the Court
5 issue an Order: (1) consolidating the related actions; (2) appointing the Rydex Litigation Group
6 and its members Lead Plaintiffs in this action; and (3) approving Sparer Law Group as Lead
7 Counsel.

8 Dated: May 18, 2010

9 Respectfully submitted,

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